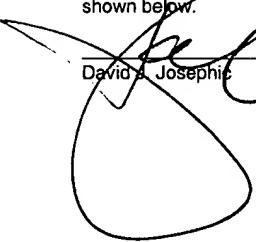




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David S. Josephson

August 30, 2005  
Date

Serial No: 09/911,243  
Filed: July 23, 2001  
Applicant: Thomas G. Mushaben  
Title: METHOD AND APPARATUS FOR INTERDIGITALLY STRETCHING POLYMER FILMS AND NONWOVEN WEBS  
Art Unit: 1772  
Examiner: Emmanuel S. Luk  
Conf. No: 4993  
Atty. Dkt.: CLOP-465CP

Cincinnati, Ohio 45202

August 30, 2005

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

It has been brought to the attention of the undersigned that the Appeal Brief in the above application bearing a certificate of mailing date of January 27, 2005 and received in the Patent Office on January 31, 2005 has not been scanned into the PTO system. In this connection, enclosed are photocopies of:

Transmittal of Appeal Brief bearing a Certificate of Mailing date of January 27, 2005

Brief on Appeal bearing a Certificate of Mailing date of January 27, 2005

Postcard bearing the PTO Stamp showing receipt on January 31, 2005 of the Brief on Appeal in Triplicate, Transmittal and \$500 check

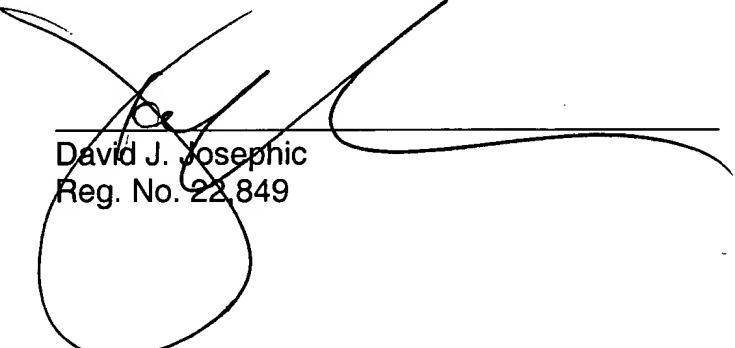
Cancelled check evidencing payment of the requisite fee

09/911,243

It is respectfully requested, in view of the above information and attachments hereto, that the Brief be entered into the PTO record and further that it be considered by the Board bearing in mind its original date of receipt at the Patent Office.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.



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PATENT  
ATTY. DOCKET NO. CLOP/465OP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thomas G. Mushaben Art Unit: 1772  
Serial No. : 09/911,243 Examiner: Emmanuel S. Luk  
Filed : July 23, 2001  
For : METHOD AND APPARATUS FOR INTERDIGITALLY STRETCHING  
POLYMER FILMS AND NONWOVEN WEBS

Mail Stop Appeal Brief-Patents  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on 11-30-2004.
2. STATUS OF APPLICANT

This application is on behalf of:

Small Entity  
 Other Than a Small Entity

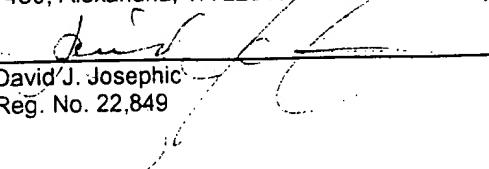
3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 CFR 1.17(f), the fee for filing the Appeal Brief is:

Small Entity (\$250.00)  
 Large Entity (\$500.00)  
Appeal Brief Fee Due \$ 500.00.

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\_\_\_\_\_  
David J. Josephic  
Reg. No. 22,849

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply. Complete (a) or (b) as applicable.

(a) \_\_\_\_\_ Applicant petitions for an extension of time under 37 CFR 1.136 for the total number of months checked below:

Extension <u>(months)</u>	Fee for other than <u>small entity</u>	Fee for <u>small entity</u>
one month	\$ 120.00	\$ 60.00
two months	\$ 450.00	\$225.00
three months	\$1020.00	\$510.00
four months	\$1590.00	\$795.00
five months	\$2160.00	\$1080.00

Extension fee due with this request \$\_\_\_.

If an additional extension of time is required, please consider this a petition therefor. (Check and complete the next item, if applicable)

\_\_\_\_\_ An extension for \_\_\_\_\_ months has already been secured and the fee paid thereof of \$\_\_\_\_\_  
is deducted from the total fee due for the total months of extension now requested.  
Extension fee due with this request \$\_\_\_\_\_.

OR

(b)  Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

5. TOTAL FEE DUE

The total Fee due is:

Appeal Brief Fee of \$ 500.00.

Extension Fee (if any) \$\_\_\_.

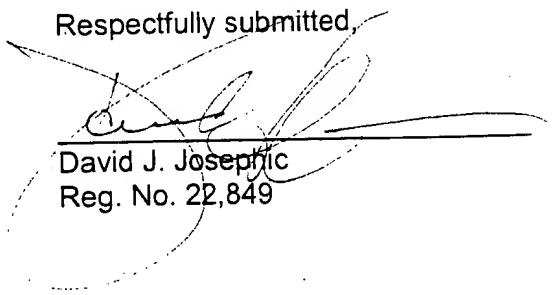
**TOTAL FEE DUE \$ 500.00**

6. FEE PAYMENT AND FEE DEFICIENCY

Attached is a check in the amounts of \$ 500.00.

If any additional fee for claims or extension of time is required, charge Account No. 23-3000.

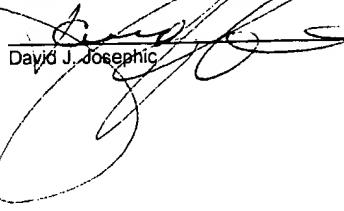
Respectfully submitted,

  
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David J. Josephic

January 27, 2005  
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS

Ex parte Mushaben  
Appeal No. \_\_\_\_\_

Serial No: 09/911,243  
Filed: July 23, 2001  
Applicant: Thomas G. Mushaben  
Title: METHOD AND APPARATUS FOR INTERDIGITALLY STRETCHING  
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**BRIEF ON APPEAL**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS

Ex parte Mushaben  
Appeal No. \_\_\_\_\_

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 Art Unit: 1772  
 Examiner: Emmanuel S. Luk  
 Conf. No: 4993  
 Atty. Dkt.: CLOP-465CP

**BRIEF ON APPEAL**

**REAL PARTY IN INTEREST**

The subject application is owned by Clopay Plastic Products Company, Inc.,  
of Mason, Ohio.

**RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to the Appellant, the  
Appellant's legal representative, or assignee which will directly affect or be directly affected  
by or have a bearing on the Board of Appeals' decision in the pending appeal.

**STATUS OF CLAIMS**

Claims 17-26 have been finally rejected under 35 U.S.C. §103. Claims 17-26  
appear under the Claims Appendix.

## **STATUS OF AMENDMENTS**

An Amendment after final has not been entered. Accordingly, for purposes of this Appeal claims 17-26 as finally rejected in the Office Action dated June 1, 2004 are the subject of this Appeal.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

Claims 17-26 are directed to a device for forming a polymeric film or non-woven fibrous web by interdigitally stretching the film or web throughout its depth along a plurality of lines while controlling the film or web in a substantially unstretched condition adjacent to stretch lines to reduce breakage. The breakage may be in the form of pinholes, tears, shreds or other damage. (**Specification, page 6, lines 15-21**). Two independent claims are the subject of this Appeal, namely claims 17 and 21. A concise explanation of each of these claims with references to the specification by page and line number and to the drawing with reference characters in accordance with 37 CFR §41.37 of the Rules is as follows.

17. (**See generally specification pages 10-14, Figs. 1 and 2, beginning at line 3 at page 10**) A device for preventing breakage in a polymeric film or nonwoven web **(10)** during stretching comprising:

a first interdigital roller **(26)**;

a second interdigital roller **(38)**, intersecting the first interdigitating roller, the intersection **(see specifically**

Figs. 4 and 5, specification page 13, line 22 to page 14,  
line 9) of said first and second interdigital roller serving to  
interdigitally stretch (by interdigital grooves 28, 40) a length  
of the film or web (10) along a plurality of lines (37) across  
its width except in a substantially unstretched area (10a) of  
the film or web adjacent said lines along its length; and  
at least one disc (32) for contacting said film  
or web area (10a) and pressing said area (10a) into the first  
interdigital roller (26) without substantially stretching the  
film or web (10) in said area (10a) adjacent said lines (37)  
during said interdigital stretching.

Dependent claims 18-20 are presented as a group hereinafter for the  
Board of Appeals' consideration.

18. The device of claim 17, further  
comprising at least one set of interengaging spaced rollers  
(18) for creating the substantially unstretched area (10a)  
along the length of the film or web (10).

19. The device of claim 17 further comprising a bar for creating the substantially unstretched area (10a) along said length of film or web (10).

20. The device of claim 17 further comprising a member for creating the substantially unstretched area (10a) along said length of film or web (10) selected from the group consisting of a folder, corrugater, furrower, gatherer, creaser, progressive roll former, and overlapper of said film or web (10). (see Figs. 1-8 and specification at page 12, line 21 to page 14, line 22)

21. A device (see generally specification pages 10-14, Figs. 1 and 2, beginning at line 3 at page 10) for preventing breakage in a polymeric film or nonwoven fibrous web (10) during stretching comprising:  
a first interdigital roller (26);  
a second interdigital roller (38), intersecting the first interdigitating roller, the intersection (see specifically Figs. 4 and 5, specification page 13, line 22 to page 14, line 9) of said first and second interdigital roller serving to interdigitally stretch (by interdigital grooves 28, 40) a length

of the film or web (10) along a plurality of lines (37) across its width except in a substantially unstretched area (10a) of the film or web adjacent said lines along its length; and

a controller (see Figs. 3-9 and specification at page 12, line 21 to line 22 of page 14) for creating at least one substantially unstretched area (10a) along the length of the film or web (10) adjacent said lines (37) during said interdigital stretching.

With respect to claims 22-26, these claims are grouped hereinafter for consideration by the Board of Appeals. Please see same specification pages and Figs. as for claim 21.

22. The device of claim 21 comprising a plurality of said controllers (see Figs. 3-9, any of controllers shown at 22, 32, 100 or 120).

23. The device of claim 21 further comprising a presser (32) for forcing the substantially unstretched film or web area (10a) into the first interdigital roller (26).

24. The device of claim 23, wherein the  
presser includes at least one rotatable disc (22 or 32) for  
contacting the substantially unstretched film or web area  
(10a) and pressing said area into the first interdigital roller  
(26) without substantially stretching said area.

5

25. The device of claim 21, further  
comprising a member for creating the substantially  
unstretched film or web area (10a) wherein the controller is  
selected from the group consisting of a folder, corrugater,  
furrower, gatherer, creaser, progressive roll former, and  
overlapper of said film or web (see Figs. 3-9 and the  
**specification as above**).

26. The device of claim 21, wherein the  
controller is laterally adjustable (see Fig. 3 and specification  
at page 13, lines 14-21).

**GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

There is only one ground of the rejection to be reviewed on appeal and that is whether claims 17-26 are patentable under 35 U.S.C. §103 over Kezuka et al (U.S. Patent No. 4,614,632) in view of Wenning et al (U.S. Patent No. 5,792,487).

**ARGUMENT****The Final Rejection**

Claims 17-26 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kezuka et al U.S. Patent No. 4,614,632 (hereinafter Kezuka) in view of Wenning et al U.S. Patent No. 5,792,487 (hereinafter Wenning). In this ground of rejection, the Examiner states that "Kezuka teaches the claimed apparatus having a first and second intersecting interdigital rollers (54a, 54b), a press roll [controller or disc] (53) for contacting the film to the first roller". The Examiner acknowledges that "Kezuka fails to claim a bar, presser, a plurality of controllers and progressive roll formers and lateral adjustable (sic)." However, the Examiner claims "Wenning teaches the claimed apparatus of producing corrugated materials via intersecting interdigital rollers (18, 28)" and "controllers (14a, 14b, 14c) for contacting the rollers." The Examiner has concluded that "It would have been obvious to one of ordinary skill in the art to modify Kezuka with rollers as taught by Wenning because it allows for the creation of slack in the film and the formation of corrugation along the width of the film." With respect to other claims like 19 and 26, the Examiner simply concludes it would be obvious to one of ordinary skill in the art to meet the claim limitations.

**Appellant's Response**

Appellant respectfully submits for the following reasons that the rejection is based on an erroneous reading of both Kezuka and Wenning, and has no factual basis.

**Independent Claim 17**

The device of claim 17 comprises interdigitating rollers for stretching a length of polymeric film or web (hereinafter "polymeric film" or "film") along a plurality of lines across its width except in a substantially unstretched area of the polymeric film adjacent to the stretch lines along its length. A disc is employed for contacting the substantially unstretched area of the polymeric film and pressing it into the first interdigital roller without substantially stretching the polymeric film in that area during the interdigital stretching.

In order to understand claim 17, one must first understand that interdigital rollers for interdigitally stretching polymeric film are well known and appellant in his Information Disclosure Statement cited an early example of interdigital stretching devices, namely, U.S. Patent No. 4,153,664 to Sabee. Furthermore, such interdigital rollers for stretching film are also disclosed in appellant's detailed specification description at page 20, line 17 to page 23, line 14. U.S. Patents Nos. 5,200,247 and 5,407,979 have been referred to at page 16, lines 19-22 as further examples of incremental film stretchers. Therefore, in order to interpret appellant's claim language in light of the specification and prior art, one must first understand the nature of interdigital stretchers. These well known interdigital stretchers cause pinholing or breakage upon incremental stretching of the polymer films. Appellant's claim 17 is directed to solving that problem. The problem is solved as set forth in the structural and functional language of claim 17 by providing interdigital rollers which intersect to interdigitally stretch the film except in a substantially

unstretched area of the film adjacent to the stretch lines. For that unstretched area of the film, claim 17 provides a disc for contacting the unstretched film area and pressing that film area into the first interdigital roller without substantially stretching the film adjacent to the stretch lines during the interdigital stretching. Thus, appellant has solved the problem of film breakage by arranging the intersecting stretching rollers with a disc for contacting and pressing the unstretched film area into a roller during the interdigital stretching across the width of the film.

Neither Kezuka nor the Wenning patents disclose interdigital rollers for stretching a film across its width. In fact, both references are directed to embossing or corrugating rollers for molding extrusions of plastic material. In the case of Kezuka, with reference to Figs. 1 and 12, the rollers actually have pins for making an egg carton type extrusion (see Fig. 3). With reference to Fig. 12 of Kezuka, which has been referred to by the Examiner, molten thermoplastic is "embossed by the teeth of the toothed rolls 54a, 54b". A correct reading of the Kezuka patent would also reveal, as in the Abstract lines 1-3, that it relates to:

A method and an apparatus for continuously forming embossed sheets having good mechanical properties but no directional property. (Emphasis added)

In other words, Kezuka could not be more unrelated to appellant's interdigital rollers for interdigitally stretching a polymeric film where the claimed purpose is to interdigitally stretch the film along a plurality of lines across its width except in an unstretched area of the film adjacent the lines along its length.

Neither the Kezuka nor the Wenning patents gives any hint of the problem which is addressed by and solved by independent apparatus claim 17, namely, providing

a disc which contacts a substantially unstretched area of the film and presses it into the first roller without substantially stretching the polymeric film adjacent the lines which are to be interdigitally stretched. There is absolutely no disclosure or suggestion of the claimed combination by either of the cited Kezuka or Wenning patents.

Wenning discloses a corrugator for molding plastic . . . not for stretching a polymeric film or web. The Examiner has referred to Wenning as suggesting that elements 14a-14c are controllers. These elements are simply cooling rollers (see column 4, lines 32-37) which decrease the temperature of the extruded plastic film prior to molding the extruded material which still retains its moldable temperature. In no way may these cooling rollers be construed as a disc for pressing against film without substantially stretching it adjacent the lines along which the web or film is interdigitally stretched by rollers as called for by appellant's claim 17.

In brief, neither of the cited patents is directed to interdigital stretching rollers for stretching a polymeric film or web. Furthermore, neither of the cited patents calls for the use of a disc to contact and press a substantially unstretched area of polymeric film or web during the process of incremental stretching it to prevent breakage. In other words, neither of the patents discloses or suggests the essential elements of independent claim 17. There is no factual basis for the 35 U.S.C. §103 rejection.

#### Independent Claim 21

Independent claim 21 calls for the same arrangement of interdigital stretching rollers as claim 17 except that a controller element is provided for creating at least one substantially unstretched area along the length of the film or web adjacent the stretch lines of the film during the interdigital stretching. Whereas, in the case of independent claim 17,

a disc was provided for pressing a substantially unstretched film area into the interdigital rollers during stretching, independent claim 21 calls for a controller for creating the unstretched area of the film.

Following up on the above discussion with respect to independent claim 17, neither Kezuka nor Wenning provides for a controller for creating an unstretched area of film (i.e., "slack") during interdigital stretching by rollers. Neither of these patents, as stated above, is directed to film stretching. Also, there are no elements disclosed for creating an unstretched area of the film during interdigital stretching. As just stated, the rolls of Wenning that had been referred to by the Examiner as controllers are simply cooling rollers which decrease the temperature of extruded plastic prior to molding the extruded material which still remains in its moldable temperature. In no way may these cooling rollers be construed as creating slack or an unstretched area of polymer film. Wherefore, neither of the cited patents discloses or suggests the essential elements of independent claim 21. There is no factual basis for the 35 U.S.C. §103 rejection.

#### Dependent Claims 18-20

Dependent claims 18-20 have been grouped together for consideration by the Board of Appeals. These claims depend from claim 17 and further define the element for creating the substantially unstretched area of the film as either one set of interdigitating space rollers (claim 18), a bar (claim 19) or elements from a group of devices such as "a folder, corrugater, furrower, gatherer, creaser, progressive roll former, and overlapper" (claim 20). For the reasons developed above in connection with independent claim 17 and for the further reason that none of the specific elements are disclosed for the functions

recited in claims 18-20, these claims are patentable. There is no factual basis for the 35 U.S.C. §103 rejection of claims 18-20.

### **Dependent Claims 22-26**

Dependent claims 22-26 further define the controllers for creating the unstretched area of the film during interdigital stretching, more specifically, as a plurality of controllers (claim 22) or a controller selected from the group of "a folder, corrugater, furrower, gatherer, creaser, progressive roll former, and overlapper" of said film or web (claim 25) or where the controller is laterally adjustable (claim 26). For the reasons developed in connection with independent claim 21, neither Kezuka nor Wenning discloses or suggests such controllers, let alone the specific structure of claims 22, 25 or 26.

In the case of claims 23 and 24, in addition to the controller for creating the unstretched film, these claims provide for a presser for forcing that area into the first interdigital roller (claim 23) or where the presser is a rotatable disc for pressing the film area into the first interdigital roller without substantially stretching it (claim 24). There is no factual basis for the rejection of claims 22-26 under 35 U.S.C. §103.

### **Authorities**

The M.E.P., under Section 706.02(j) states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See

MEP. § 2143 - 2143.03 for decisions pertinent to each of these criteria. (Emphasis added.)

The Examiner's rejection makes reference to the decision of the Supreme Court of the United States' in Graham v. John Deere, 383 U.S. 1, 148 (1966), but fails to follow through in presenting a factual basis for the rejection of claims 17-26. To the contrary, no factual basis has been established by the citation of Kezuka or Wenning for the rejection under 35 U.S.C. §103. As expressed by the Court of Customs and Patent Appeals in In re Warner and Warner, 379 F.2d 1011, 154 U.S.P.Q. 173, at 177 and 178 (CCPA 1967):

We think the precise language of 35 U.S.C. 102 that 'a person shall be entitled to a patent unless' concerning novelty and unobviousness, clearly places a burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.

The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis. (Court's emphasis)

The Supreme Court in Graham [Graham v. John Deere Co., 383 U.S. 1], and Adams [United States v. Adams, 383 U.S. 39] supra, foreclosed the use of substitutes for facts in determining obviousness under section 103. The legal conclusion of obviousness must be supported by facts. (Court's emphasis)

Appellant urges that absent the use of assumptions and impermissible hindsight<sup>1</sup>, there is no motivation<sup>2</sup> in the applied prior art to have modified their disclosures to arrive at the claimed invention<sup>3</sup>.

It is also appellant's position that the Patent Act of 1952 introduced a new statute with respect to "functional" claims in the last paragraph of 35 U.S.C. §112. As enunciated by the decision of the CCPA in In re Fuetterer, 138 USPQ 217 (1963):

I should like to say a word on the provision in the bill for functional claiming. [H.R. 3760, 82d Cong., 1st Sess., §112 (1951)]\*\*\*. This provision in reality will give statutory sanction to combination claiming as it was understood before the Halliburton decision. All the elements of a combination now will be able to be claimed in terms of what they do as well as in terms of what they are. (Court's emphasis)

Inasmuch as it is our opinion (1) that there is no statutory ban on the use of the "functional" language employed in the instant claims by appellant; . . . (3) that the use of such functional

<sup>1</sup>The use of hindsight knowledge derived from the appellant's own disclosure to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W.L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

<sup>2</sup>Most if not all inventions arise from a combination of old elements. See In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. See id. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the appellant. See In re Dance, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

<sup>3</sup>A case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

statements as here appear is specifically sanctioned by the third paragraph of 35 U.S.C. §112; . . .

The issue was also taken up by the Court of Customs and Patent Appeals in In re Attwood, 148 USPQ 203 (CCPA 1966). The Court recognized that claimed "use limitations" or functions are "functional expressions which must be given weight". (In re Attwood, at 210). In view of the significance of the Court's language, it is reproduced as follows:

The Board's "Fully Structurally  
Met" Idea

We refer to this as an idea rather than a rejection as it is not clear whether the board was making a new rejection or merely supporting the examiner's obviousness rejection by a sort of a *a fortiori* argument, regarding a reference that fully meets a claim as the ultimate in showing obviousness. This idea was not applied to claim 51. As to the other claims, the board could reach its conclusion only by ignoring parts of the claim which do not, in fact, read on Holmstrom. These parts are in clauses (1) and (6) of our claim analysis, supra, namely, the parts beginning with the word "for." The board deemed these to be "use limitations" which merely denoted intended use, of no patentable significance, which cannot be relied on to sustain patentability. We do not so regard them. (Emphasis added)

. . . All this was prior to the Patent Act of 1952 which introduced a new statute with respect to "functional" claims in the last paragraph of 35 U.S.C. 112. One of the purposes of this statute was modification of the Halliburton rule. As stated in Federico's Commentary on the New Patent Act, 35 U.S.C.A., at p. 25: (Emphasis added)

We have here a combination claim and the limitations ignored by the board as use limitations we think are functional expressions which must be given weight. We consider that 35 U.S.C. 112 has rendered much if not most of what was said in Dalton on this point obsolete. When these clauses are

considered, there is no foundation for the board's view that the claims read on Holmstrom. (Emphasis added)

Further, we believe that the claim limitations to frame members for use in adjustable framing construction etc. should be given weight under our decision in *Kropa v. Robie*, 35 CCPA 858, 187 F.2d 150, 88 U.S.P.Q. 478, 481.

In addition to the above cases, the Court of Customs and Patent Appeals has decided In re Angstadt and Griffin, 190 USPQ 214 (CCPA 1976) and In re Geerdes, 180 USPQ 789 (CCPA 1974). In the In re Geerdes case, the Court pointed out that:

every limitation in the claim must be given effect rather than considering one in isolation from the others" (Court's emphasis), at page 791.

Similarly, the Court stated in In re Angstadt and Griffin at page 217:

We note at the outset that the claim limitation "to form \*\*\* hydroperoxides" must be given effect since we must give effect to all claim limitations. See In re Geerdes, 491 F.2d 1260, 180 USPQ 789 (CCPA 1974); In re Wilder, 57 CCPA 1314, 429 F.2d 447, 166 USPQ 545 (1970). Furthermore, the use of functional language is sanctioned specifically by the third paragraph of section 112. (Court's emphasis)

In Wentworth v. Schena, 219 USPQ 1042, 1044 (Patent and Trademark Office, Board of Patent Interferences 1983) when the Board was confronted with an apparatus claim containing the language "for supplying catalyst to a blower of a liquid fuel combustion device", it held that such a functional recitation must not be ignored citing Kropa v. Robie, 187 F.2d 150, 88 USPQ 478 (CCPA 1951); In re Attwood, 354 F.2d 365, 148 USPQ 203 (CCPA 1966); Ex parte Varga, 189 USPQ 204 (Pat.Bd.App. 1973).

In view of the above authorities, the structure and functional language of the claims 17-26 must be considered in evaluating the patentability under 35 U.S.C. §103.

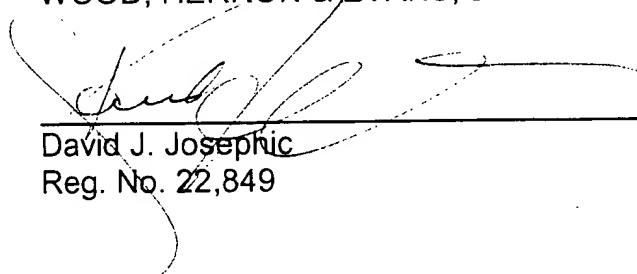
When the structures and functions of device claims 17-26 are considered, it is evident that the Kezuka and Wenning patents do not factually support a rejection of claims 17-26. The claimed combination of interdigital stretching rollers for polymeric films and a disc or controller for their recited functions are not disclosed or rendered obvious by the cited patents.

### CONCLUSION

In accordance with the above argument, and reasons fully developed, in view of the authorities, appellant submits that claims 17-26 are patentably distinct over the references relied upon under 35 U.S.C. §103. Wherefore, the decision of the Examiner should be reversed and the decision of the Board of Appeals granting the patentability of all claims 17-26 is respectfully solicited.

Respectfully submitted,

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## CLAIM APPENDIX

17. A device for preventing breakage in a polymeric film or nonwoven web during stretching comprising:

a first interdigital roller;

a second interdigital roller, intersecting the first interdigitating roller, the intersection of said first and second interdigital roller serving to interdigitally stretch a length of the film or web along a plurality of lines across its width except in a substantially unstretched area of the film or web adjacent said lines along its length; and

at least one disc for contacting said film or web area and pressing said area into the first interdigital roller without substantially stretching the film or web in said area adjacent said lines during said interdigital stretching.

18. The device of claim 17, further comprising at least one set of interengaging spaced rollers for creating the substantially unstretched area along the length of the film or web.

19. The device of claim 17 further comprising a bar for creating the substantially unstretched area along said length of film or web.

20. The device of claim 17 further comprising a member for creating the substantially unstretched area along said length of film or web selected from the group consisting of a folder, corrugater, furrower, gatherer, creaser, progressive roll former, and overlapper of said film or web.

21. A device for preventing breakage in a polymeric film or nonwoven fibrous web during stretching comprising:

a first interdigital roller;  
a second interdigital roller, intersecting the first interdigitating roller, the intersection of said first and second interdigital roller serving to interdigitally stretch a length of the film or web along a plurality of lines across its width except in a substantially unstretched area of the film or web adjacent said lines along its length; and

a controller for creating at least one substantially unstretched area along the length of the film or web adjacent said lines during said interdigital stretching.

22. The device of claim 21 comprising a plurality of said controllers.

23. The device of claim 21 further comprising a presser for forcing the substantially unstretched film or web area into the first interdigital roller.

24. The device of claim 23, wherein the presser includes at least one rotatable disc for contacting the substantially unstretched film or web area and pressing said area into the first interdigital roller without substantially stretching said area.

25. The device of claim 21, further comprising a member for creating the substantially unstretched film or web area wherein the controller is selected from the group consisting of a folder, corrugater, furrower, gatherer, creaser, progressive roll former, and overrapper of said film or web.

26. The device of claim 21, wherein the controller is laterally adjustable.



Application Ser. No. /911,243 Doc. No. 41679 Paper No. \_\_\_\_\_

Please place the official stamp of the Patent Office on this card and return it to constitute acknowledgment by the Patent Office of receipt on the date stamped.

Inventor(s) Thomas G. Mushaben

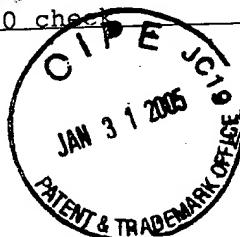
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Enclosure(s) Brief on Appeal in Triplicate w/COM; Transmittal

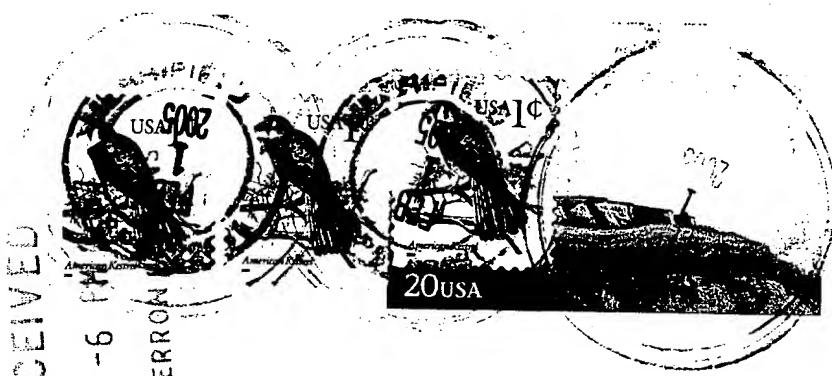
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Attorney DJJ/cjf

Date 01/27/05



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